

STATE OF MICHIGAN

DEPARTMENT OF ENVIRONMENTAL QUALITY LANSING



C. HEIDI GRETHER
DIRECTOR

November 15, 2016

Mr. Robert Kaplan, Acting Regional Administrator United States Environmental Protection Agency, Region 5 77 West Jackson Boulevard (R-19J) Chicago, Illinois 60604-3507

Dear Mr. Kaplan:

SUBJECT:

Michigan Commitment to Comply with the Start-up, Shutdown, and

Malfunction (SSM) State Implementation Plan (SIP) Call

Pursuant to Section 110 of the federal Clean Air Act; Part 55, Air Pollution Control, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended; and the SSM SIP Call (80 Federal Register 33840), the Michigan Department of Environmental Quality (MDEQ) is submitting the following commitment to comply with the SSM SIP Call to the United States Environmental Protection Agency (USEPA).

The MDEQ, through this submittal, is committing to make a full SIP submittal to comply with the SSM SIP Call once R 336.1916 is promulgated. The enclosed commitment includes the draft version of R 336.1916 currently in the rulemaking process.

We request that the USEPA accept this submittal as MDEQ's commitment to comply with the SSM SIP Call. Questions on this submittal may be directed to Ms. Mary Maupin, SIP Unit Supervisor, Air Quality Division, at 517-284-6755; maupinm@michigan.gov; or MDEQ, P.O. Box 30260, Lansing, Michigan 48909-7760; or you may contact me.

Sincerely, O Leide Srether

C. Heidi Grether

Director

517-284-6700

Enclosure

cc/enc: Ms. Mary Portanova, USEPA, Region 5

Mr. Robert Wagner, Program Deputy Director, MDEQ

Ms. Lynn Fiedler, MDEQ Ms. Mary Maupin, MDEQ Ms. Erica Wolf, MDEQ



COMMITMENT TO COMPLY WITH THE START-UP, SHUTDOWN, AND MALFUNCTION STATE IMPLEMENTATION PLAN CALL

for

R 336.1916 Affirmative Defense for Excess Emissions During Start-up or Shutdown

November 14, 2016

Prepared by:

Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, MI 48909-7760
INTERNET: http://www.michigan.gov/deqair

TABLE OF CONTENTS

	Page No.
Commitment to Comply with SSM SIP Call1	
ATTACHMENTS:	
ATTACHMENT A	Strike-bold copy of draft R 336.1916 as submitted to the Office of Regulatory Reinvention.
ATTACHMENT B	Michigan's administrative rules process.

Commitment to Comply with SSM SIP Call

The State of Michigan, through the Michigan Department of Environmental Quality (MDEQ), is committing to comply with the Start-up, Shutdown, and Malfunction (SSM) State Implementation Plan (SIP) Call by revising the Michigan SIP for R 336.1916. The MDEQ intends to revise R 336.1916 to comply with the SSM SIP Call requirements and then remove the current version of R 336.1916 from the SIP.

On June 12, 2015, the United States Environmental Protection Agency (USEPA) issued an SSM SIP Call (80 Federal Register 33840) that applies to R 336.1916. The MDEQ began the rulemaking process to correct the deficiency in R 336.1916 to comply with the SSM SIP Call in November 2015. Attachment A contains the rulemaking process for the State of Michigan. Currently, R 336.1916 is at the Joint Committee on Administrative Rules. When this legislative committee completes its review process, R 336.1916 will be transmitted to the MDEQ and the Office of Regulatory Reinvention for formal adoption and filing with the Office of the Great Seal, completing the promulgation process.

The draft of R 336.1916 (Attachment B) will comply with the SSM SIP Call by making an affirmative defense for start-up and shutdown events applicable only to state rules not contained in Michigan's SIP; specifically R 336.1224 to R 336.1228 and R 336.1901. These rules are enforceable only at the state level. R 336.1224 to R 336.1228 are Michigan's air toxics rules, and R 336.1901 is a state-only nuisance rule. Once R 336.1916 is promulgated by the State of Michigan, the MDEQ will submit a SIP revision to remove the current version of R 336.1916 from the SIP. This will ensure that any affirmative defenses based on start-up or shutdown events in Michigan will only be available to violations of rules that are not contained in the SIP.

Again, the MDEQ intends to fully comply with the SSM SIP Call once R 336.1916 is promulgated and a SIP revision can be submitted to the USEPA.

ATTACHMENT A

Administrative Rules Process in a Nutshell

The process for creating, amending, and rescinding administrative rules is governed by the Administrative Procedures Act, PA 306 of 1969, MCL 24.201 to 24.328. (Note this is an overview and does not include all required provisions.) February 2015

Starting Out:
Request for
Rulemaking
(RFR)

- ▲ A proposal for rulemaking can originate from professional boards or commissions, advisory committees, the department, or the public.
- ▲ The official Request for Rulemaking (RFR) must come from the department to the Office of Regulatory Reinvention (ORR) to begin.
- ▲Within each department, the Regulatory Affairs Officer (RAO) works with staff to send an RFR to the ORR. The ORR approves or disapproves the RFR. If approved, the ORR notifies the Joint Committee on Rules (JCAR) of the approval.

 \parallel

Draft Rules:Prior to the Public Hearing

- ▲ Rules are drafted and approved by any necessary department, board or commission. The RAO submits the rules to the ORR to review for legal authority.
- ▲ The ORR approves the draft and notifies JCAR. The ORR sends the draft to the Legislative Service Bureau for editing according to format and style.
- ▲ The Legislative Service Bureau returns the edited draft to the ORR, and the ORR returns the draft to the department to add the new formatting edits.

Il

Public Hearing & Public Comment

- ▲ A Regulatory Impact Statement & Cost-Benefit Analysis is prepared by the department and sent to ORR for approval 28 days prior to the public hearing.
- ▲ A public hearing notice, which includes the deadline for written comment, and the edited draft rules are sent by the RAO to ORR for approval.
- ▲ The notice is published in 3 newspapers including 1 in the UP, not less than 10 days but no more than 60 days prior to the hearing.
- ▲ The public hearing notice and edited draft rules are published in the *Michigan Register* by the ORR.

Ú

Post-Hearing Draft Rules

- ▲ Department RAO submits final draft of the rules and Joint Committee on Administrative Rules Report to ORR.
- ▲ ORR submits the final draft to the Legislative Service Bureau to certify the rules for form, classification, and arrangement.
- ▲ ORR legally certifies the rules and sends the JCAR Report, including the final draft of the rules, certifications, Regulatory Impact Statement, and RFR to JCAR.

IL

Joint Committee on Administrative Rules (JCAR)

- ▲ The JCAR Report and rules must be submitted to JCAR within 1 year from the public hearing, or there must be a subsequent public hearing.
- ▲ The JCAR Report summarizes the purpose of the draft rules and any comments made at the public hearing or submitted in writing.
- ▲ The rules must be before JCAR for 15 session days.
- ▲ During those 15 days, JCAR may object to the rules, but then must pass legislation within another 15 session days to stop or delay the rules.
- ▲ JCAR may also waive the remaining of the required 15 session days.
- ▲ Rules can be filed by ORR with the Office of the Great Seal after 15 session days expire or JCAR has waived the 15 day requirement.

11

Department Adopts Rules

- ▲ Department director, agency or commission (for type 1 agency) confirms the intent to adopt the rules by submitting a certificate of adoption to ORR.
- ▲ ORR enters the filing date at the top of the first page of the rules and sends an electronic and hard copy to the Office of the Great Seal.

ORR Files with Office of the Great Seal

- ▲ The rules may become effective immediately upon filing, or at a later date specified in the rules selected by the department.
- ▲ On the effective date, ORR amends the state administrative code to reflect the new language of the rules.

ATTACHMENT B

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY AIR QUALITY DIVISION

PART 9. EMISSION LIMITATIONS AND PROHIBITIONS—MISCELLANEOUS

R 336.1916 Affirmative defense for excess emissions during start-up or shutdown for violations of R 336.1224 to R 336.1228 and R 336.1901.

Rule 916. (1) The person operating a source with emissions in excess of an applicable emission limitation due to start-up or shutdown may claim an affirmative defense to an enforcement proceeding for violations of R 336.1224 to R 336.1228 and R 336.1901, excluding a judicial action seeking injunctive relief, if the person has complied with the reporting requirements of R 336.1912 and has demonstrated all of the following:

- (a) The periods of excess emissions that occurred during start-up or shutdown were short and infrequent and could not have been prevented through careful planning and design.
- (b) The excess emissions that occurred during start-up or shutdown were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
- (c) The excess emissions caused by a bypass (an intentional diversion of control equipment) were unavoidable to prevent loss of life, personal injury, or severe property damage.
- (d) The facility was operated at all times in a manner consistent with good practice for minimizing emissions.
- (e) The frequency and duration of operating in start-up or shutdown mode were minimized to the maximum extent practicable.
- (f) All reasonably possible steps were taken to minimize the impact of the excess emissions on ambient air quality.
 - (g) All emission monitoring systems were kept in operation if at all possible.
- (h) The actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence as provided by R 336.1912.
- (i) Excess emissions presenting an imminent threat to human health, safety, or the environment were reported to the department as soon as possible. Unless otherwise specified in the facility's permit, other excess emissions were reported as provided in R 336.1912. If requested by the department, a person shall submit a full written report that includes the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.
- (j) Any information submitted to the department under this subrule shall be properly certified in accordance with the provisions of R 336.1912.
- (2) This affirmative defense does not apply when a single emission unit, or multiple emission units at a stationary source, causes an exceedance of the national ambient air quality standards or any applicable prevention of significant deterioration increment.
- (3) If the proximate cause of the excess emissions which occurred during routine start-up or shutdown periods was due to a malfunction, then, absent any intervening acts or superseding causes, the instances shall be treated as malfunctions in accordance with R 336.1915.
- (4) Nothing in this rule shall be construed to limit the authority of the department to seek injunctive relief or to enforce the provisions of the act and the regulations promulgated under the act.